Federal Communications Commission
Washington

OFFICE OF
THE SECRETARY

DOCKET FILE COPY ORIGINAL

June 29, 2000

Jennifer Fagan, Esquire
Office of Regulatory Affairs
Public Utility Commission of Texas
PO Box 13326
Austin, Tx 78711

Re: Motion to Accept Comments As Timely Filed in CC Docket No. 99-200

I have received your request that the Commission accept your comments as timely in the above-referenced proceeding. In support of your request, you assert that the ECFS was not operational for an extended period of time on May 19, 2000.

Pursuant to 47 C.F.R. Section 0.231(I), I have reviewed your request. After consulting with the administrators and technical staff for the ECFS, I have determined that the ECFS was functioning properly the entire day on May 19, 2000. Other electronic submissions were received by the ECFS system on this date. Therefore, a grant of your request to accept your comments as timely is not warranted.

I have stamped your comments as received on May 22, 2000. Nonetheless, I have forwarded your request to the Common Carrier Bureau so its staff can determine whether to consider the substantive issues that you raise in your comments.

Cordially,

Magalie Roman Salas

Magalie Roman Salas
FCC Secretary

Public Utility Commission of Texas

May 19, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C 20554

Re: *Numbering Resource Optimization*,
CC Docket No. 99-200

Dear Ms. Salas:

Enclosed for filing please find one (1) original and four (4) copies of both the Comments of the Public Utility Commission of Texas and a Motion to Accept the Filing as Timely Filed. The Texas Commission attempted to file the comments via the Electronic Comment Filing System; however, the system was down for an extended period of time this afternoon. As suggested in the "ECFS Tips and News" section of the website, I contacted your Office to inform you that the Texas Commission would be filing paper comments.

If any of our attempts to file these comments electronically were successful, please disregard this filing. Additionally, if you have any questions, please do not hesitate to contact me at (512) 936-7278.

Very truly yours,

Jennifer Fagan
Attorney
Office of Regulatory Affairs

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	§	
	§	**CC Docket No. 99-200**
Numbering Resource Optimization	§	
	§	

MOTION TO ACCEPT THE FILING AS TIMELY FILED

TO THE HONORABLE COMMISSION:

Comes now, the Public Utility Commission of Texas (Texas Commission) and files this Motion to Accept the Filing as Timely Filed and in support thereof states as follows:

On May 19, 2000, the Texas Commission attempted to file its comments in response to the *Further Notice of Proposed Rulemaking* in this docket via the Commission's Electronic Comment Filing System (ECFS). However, the ECFS system was down for an extended period of time and the Texas Commission was unable to successfully file its comments. Additionally, the Texas Commission attempted to file its comments via Internet e-mail addressed to ecfs@fccsun24w@fcc.gov. However, an e-mail response was received stating the Commission's server was unable to deliver the message.

The Texas Commission believes it has attempted in good faith to file its comments in a timely manner. Therefore, the Texas Commission requests that the Commission grant its Motion to Accept the Filing as Timely Filed.

Respectfully Submitted,

Bret Slocum
Director-Office of Regulatory Affairs

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Assistant Director-Office of Regulatory Affairs

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	§	
	§	**CC Docket No. 99-200**
Numbering Resource Optimization	§	
	§	

COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

I. INTRODUCTION

On March 31, 2000, the Federal Communications Commission (FCC or Commission) released its *Report and Order and Further Notice of Proposed Rulemaking* (FNPRM) in this proceeding. The Public Utility Commission of Texas (Texas Commission) has not addressed all issues raised in the FNPRM report; instead, the Texas Commission has attempted to focus on those areas that it considers most significant and on which it can offer meaningful input.

II. UTILIZATION RATES

The Texas Commission expressed to this Commission in Comments on the NPRM in this docket, its recommendation of requiring an 80-85% utilization rate prior to the assignment of growth codes. The Texas Commission recommended that this utilization rate be applied to all carriers, pooling and non-pooling alike. However, as requested in the FNPRM, the Texas Commission will address only the application of utilization rates to non-pooling carriers in these comments. Although the Texas Commission is limiting its comments, the Texas Commission

notes its position on utilization rates for pooling carriers and may request that this Commission reconsider this issue.

In paragraph 248 of the *Report and Order*, the Commission proposes a utilization rate of 50% with annual 10% increases, up to 80%. The Texas Commission opposes this proposal. A 50% rate is too low to effectuate conservation. Under INC CO Guidelines, a code can be effective within 66 calendar days from the application date. It is unlikely that any carrier would use 5000 numbers (50% of the 10,000 allocated in an NXX) in two months in a single rate center. Further, although the Commission proposes a 10% step per year, until the utilization rate reaches 80%, the Texas Commission believes it is completely ineffective. The gradual improvement does nothing more than give inefficient users additional time to do nothing. At the other end of the spectrum, the Texas Commission believes a utilization rate may be too high if it does not allow for sufficient time to assign the code and enter it into the LERG. Therefore, if the true goal is to optimize resources, the Texas Commission believes that at this time, a utilization rate of less than 70% or greater than 90% does nothing to achieve optimization.

The Texas Commission recommends the adoption of a utilization rate between 70% and 80%.[1] States should be granted discretion to set the specific rate for each rate center within this range, based on whether the demand in that rate center is higher or lower than average. Additionally, States should have the ability to waive the utilization rate if a carrier can show that the six-month inventory requirements necessitate a lower utilization rate. The Texas Commission would expect this to be an unusual event, and carriers should have the burden of proving the need for the exception.

[1] An increase of this range to 80-85% may be warranted after the carriers and the administrator become more capable of accommodating higher rates.

The effectiveness of a utilization rate in the 70-80% range is seen in at least five states. A 75% utilization rate has been adopted by California,[2] Maine, Massachusetts, New Hampshire and New York.[3] None of these states have experienced problems enforcing their utilization rates.

Checks on utilization serve several purposes, one of which is assurance that the carrier is complying with number conservation requirements, such as sequential numbering and limits on the time that vanity numbers are reserved. Low utilization rates are often the first warning sign of other problems that otherwise are very hard, if not impossible, to detect. Therefore, effective utilization rates are essential to number resource optimization.

III. POOLING BY CMRS (WIRELESS) CARRIERS

In paragraph 249 of the *Report and Order*, the Commission requested comment on whether "covered CMRS carriers should be required to participate in pooling immediately upon expiration of the LNP forbearance period on November 24, 2002." The Texas Commission opposes any transition period and believes the covered CMRS carriers should be required to pool as of November 24, 2002.

CMRS carriers should not be treated differently from traditional wireline carriers any longer than is absolutely necessary. The Texas Commission is not aware of any reason that the CMRS carriers could not or should not be LNP-capable by November 2002. Once LNP-capable, they should be expected to participate in number pooling immediately. Two and a half years of forewarning is far more than wireline (currently LNP-capable) carriers were given to implement pooling in any of the state trials, and all were able to implement successfully.

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[2] In the 310 NPA only.
[3] A similar rate is being considered in Connecticut.

The FCC must look very carefully at any arguments made by carriers alleging that they technically will not be able to begin pooling on November 24, 2002. Carriers must be required to provide specific information to support their assertions. The FCC should determine whether any technical limitations: (1) could be overcome with more resources; (2) are the result of willful disregard of earlier orders and deadlines; and/or (3) are actual limitations by specific carriers and not generalized concerns raised by trade associations. Carriers often need external deadlines to justify allocating the resources necessary to meet the deadline. Without external deadlines, carriers may flounder for months or even years. Had CMRS carriers not already been granted LNP postponements, they could help maximize the benefits of pooling in Texas and elsewhere.

The implications of continuing the wireless exemption on number conservation appear quite significant. States, such as California and Maine, have found that the number pool could increase by as much as 40% if CMRS carriers were required to pool. Thus, it is critical for CMRS carriers to participate in pooling as early as possible. Another postponement of the deadline for this growing sector of the industry will extend the inefficient allocation of number resources that this Commission has recognized as inefficient and is attempting to change.

IV. CHARGING FOR TELEPHONE NUMBER RESOURCES

In paragraph 251 of the *Report and Order*, the Commission comments on the merits of fees for numbering resources. The Commission states, "[W]e continue to believe that a market-based approach is the most pro-competitive, least intrusive way of ensuring that numbering resources are efficiently allocated." The Commission continues by requesting comments on the logistics and specifics of a market-based allocation system for numbering resources. In the Texas

Commission's comments on the NPRM, the Texas Commission agreed with the Commission that such a system would increase the optimization of numbering resources, but recognized that more study and investigation would be necessary.[4] The Texas Commission continues support the use of free market philosophies as sound tools for allocation.

Some companies currently charge parties for whom they obtain numbers to assure that the order is bona fide. It would seem logical that a fee system applied by the Commission to industries would serve the same role. The Texas Commission would encourage further examination of the charges the industry currently applies in their system. Assuming that it proves to be a successful program, it may be applied at a government/carrier level.

At a philosophical level, charging for numbering resources makes sense. However, it is essential that the low-level logistics be implemented in a way that assures that competition is not threatened. This includes limiting barriers to entry and predatory actions by malicious carriers. The cost of the initial blocks of numbers should not deter new competitors from providing service. Further, it is imperative that other conservation measures, including meaningful utilization rates, coexist with any pricing mechanism. Otherwise, large wealthy carriers could buy up numbers; thus limiting the opportunities for others to provide service. Charging for numbers must not have any impact on market share and consumers' options.

The revenues from selling telephone numbers could be used to defray the costs to end-use customers of number conservation measures, i.e. pooling. It is unfair to expect the public to endure more of a burden than is absolutely necessary since the problem ultimately is one of

[4] Attached hereto as Exhibit A are the Texas Commission's comments on the NPRM relating to a proposed market-based pricing mechanism for numbering resources.

industry inefficiency. The public has had little, if any input on number usage; yet the current plan requires them to pay for historic mistakes of others.

V. CONCLUSION

The Texas Commission values the opportunity to share what we have learned in number conservation efforts in Texas and from the experiences of others. We understand the concerns of many carriers that conservation desires by this Commission and state commissions may create new and unfamiliar environment. However, the benefits of pooling, sequential numbering, and meaningful utilization thresholds have proven to be significant and should not be sacrificed.

Respectfully submitted,

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman

EXHIBIT A

EXCERPTS FROM THE COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS TO THE NPRM (Filed August 6, 1999)

PRICING OF TELEPHONE NUMBERS

A. TNs as a Natural Resource

In paragraphs 250 and 251, the FCC requests comments on pricing options to promote efficient utilization. The Texas Commission recognizes telephone numbers (TNs) are a finite resource. As a finite resource, it is essential that TNs be used as efficiently as possible. In many ways they are analogous to natural resources, such as fossil fuels. In the current environment, no communications providers pay for blocks of TNs. The lack of cost for TNs make the opportunity for hoarding very tempting. Society pays the price of no longer having access to the hoarded TNs, while the hoarder reaps the benefits of the TNs without compensating for consumption of a nonrenewable resource. This may be considered market failure—externalities exist. A charge for TNs could encourage industry to develop new more efficient number utilization methods by internalizing the otherwise external costs. Further examination of the current "no charge" environment may be justified and a per TN charge considered.

B. Impact of Charging on Public Policy

Paragraph 251 discusses the public policy and competitive ramifications of charging for TNs. The Texas Commission has historically tried to minimize entrance barriers for new entrants into the telecommunications market. Open and competitive markets are of the highest importance to the Texas Commission, as competition is generally in the public interest. Dependent upon what method is used, TNs may be sufficiently expensive to limit competition. If the new competitor is required to buy TNs as a preliminary step to entry, the cost could deter the attempt to compete; therefore squelching competition. For this reason, it may be wise to give the first block of TNs provided to each carrier free of charge. Any pricing mechanism adopted by the FCC must not significantly hinder the entry of competitors. Also, there may be concern

regarding possible flow through of these costs to end use customers. An additional line item on bills to recover these costs probably would face public scorn.

Some argue that numbers are a public good and private ownership is inappropriate. However, this argument may not be valid when one considers the present environment. To the extent that take back is not possible (i.e. no LNP capabilities in the exchange or there has been sufficient contamination of that number block), the provider already has exclusive, private control of unused TNs. Used numbers are protected from any take back. Effectively, this may be considered ownership since only the possessing carrier has the ability to use the TNs in these situations. Calling these TNs a public resource may be a misnomer.

Regardless of whether TNs should be considered privately owned, periodic lease as opposed to one-time purchase might be more appropriate. If the provider makes a one-time purchase the incentives to make the number available after it has become unneeded may diminish. Once the initial outlay is made, there would be no recurring cost. The provider, unless some sort of refund provision is established, might not be encouraged to return unused numbers.[1] Assuming that there is a refund provision for returned numbers, non-recurring charges may still need to be considered, but it would seem that they are less valuable than they would be without the refund.

Public interest may also be served by the creation of a TN charge. As discussed above, a fee could encourage providers to create more efficient use of numbers. If a pricing mechanism is constructed appropriately, it may be possible that the cost of reserving many TNs and thus causing the need for NPA relief would be high enough for inefficient carriers that conservation

[1] This is roughly analogous to returning a bottle for the deposit. Without the deposit, there is no monetary/self-rewarding rationale for returning the resource.

measures, i.e. UNP, become the better alternative. This could lead to fewer NPA relief issues and the prolonged use of seven-digit dialing. Minimization of number changes is in the best interest of the public, and charging for TNs may promote this.

C. Market-Based vs. Administratively Set Pricing

Market-based pricing may be the better alternative. Administratively determined prices lack the theoretical support of its laissez faire market counterpart. One may find that TNs can be viewed like spectrum. Just as with the frequency spectrum, there are a finite number of TNs available, they cannot overlap, and certain ranges are off limits (i.e. military frequencies cannot be used, 911 cannot be a NXX or NPA, etc.) Also, just like the frequency, expansion of the number of TNs available, ten-digit dialing, is very expensive and should be avoided where possible.

Currently, the FCC auctions frequencies in regional markets. Market-based prices by definition result from the spectrum auctions, and the same would apply if a similar system were used for TNs. From a technical standpoint, analogies can be made between the two, so this option may be deserving of further examination. One would expect that bids would match the anticipated avoided costs for the provider—the cost of migration to ten-digit dialing, additional NPAs, etc. As a NPA nears exhaustion, it is consequently probable that the bid price will increase.

Pricing measures should not be implemented without other measures to promote efficient number use, i.e. meaningful utilization requirements, proof of need, etc. Without these additional checks, there could be an opportunity for large and wealthy carriers to buy up numbers in order to limit the opportunity for small and new entrants. It could become a strange form of

predatory-like pricing. The large carrier would take unnecessary costs in the short run to hurt competitors, so that in the long run they have higher profits from a lack of competition.